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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,815	07/10/2003	Anthony John Verzino		2268

7590

08/25/2005

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EXAMINER

KEASEL, ERIC S

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/616,815	Applicant(s) VERZINO, ANTHONY JOHN	
	Examiner Eric Keasel	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/18/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 6-10, 12-17, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by McKay (US Patent Number 2,372,678).

McKay discloses a fluid dispensing apparatus, comprising: a fluid container (21) having a neck portion and a closed end (193) generally opposite the neck portion; a body mounted on the neck portion of the fluid container (see Fig. 1); a fluid extraction tube (189) attached at a delivery end thereof to the body, wherein the fluid extraction tube is attached in a manner enabling fluid to be extracted from within the fluid container and dispensed via the body; and a weighting element (191) attached to the fluid extraction tube adjacent to a pick-up end of the fluid extraction tube, wherein the weighting element provides for displacement of the pick-up end of the fluid extraction tube to a gravity-induced position within the fluid container; wherein the fluid extraction tube extends approximately through a center of mass of the weighting element (see Fig. 1); wherein the weighting element includes a metallic threaded nut (i.e. it is internally threaded); wherein the fluid extraction tube extends approximately through a center of mass of the metallic threaded nut; wherein the fluid extraction tube is flexible; and a degree of flexibility of the fluid extraction tube is dependent upon a particular mass of the weighting element and a maximum specified displacement of the pick-up end of the fluid extraction tube; and wherein the

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body is one of a body for a manual pump non-atomizing fluid dispenser, a body for a manual pump atomizing fluid sprayer, a body for an aerosol spray dispenser and a body for a hose-end sprayer.

3. Claims 1, 5-7, 11-14, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Braymer (US Patent Number 750,521).

Braymer discloses a fluid dispensing apparatus, comprising: a fluid container (20) having a neck portion and a closed end generally opposite the neck portion; a body (22) mounted on the neck portion of the fluid container; a fluid extraction tube (25 and/or 26) attached at a delivery end thereof to the body, wherein the fluid extraction tube is attached in a manner enabling fluid to be extracted from within the fluid container and dispensed via the body; and a weighting element (14, 39, or 51, or alternatively the weight in combination with the lower tube) attached to the fluid extraction tube adjacent to a pick-up end of the fluid extraction tube, wherein the weighting element provides for displacement of the pick-up end of the fluid extraction tube to a gravity-induced position within the fluid container; wherein the weighting element includes a bracket attached to the fluid extraction tube and a weight attached to the bracket; and a center of mass of the weight is offset from a longitudinal axis of the fluid extraction tube (note, a bracket is shown around the lower dip tube in Figs. 2-5 and the weight is attached to the bracket and offset from the center of the dip tube. Under an alternate reading, the upper portion of the dip tube can be read as the flexible extraction tube and the combined lower dip tube and weight can be read as the offset weight attached by a bracket between the upper and lower tubes shown in Figs. 2-5); wherein the fluid extraction tube is flexible; and a degree of flexibility of the fluid

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extraction tube is dependent upon a particular mass of the weighting element and a maximum specified displacement of the pick-up end of the fluid extraction tube; and wherein the body is one of a body for a manual pump non-atomizing fluid dispenser, a body for a manual pump atomizing fluid sprayer, a body for an aerosol spray dispenser and a body for a hose-end sprayer.

4. Claims 1, 2, 6-8, 12-15, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson (US Patent Number 3,195,788).

Wilson discloses a fluid dispensing apparatus, comprising: a fluid container (10) having a neck portion (to the right in Fig. 1) and a closed end generally opposite the neck portion (to the left in Fig. 1); a body mounted on the neck portion of the fluid container; a fluid extraction tube (23) attached at a delivery end thereof to the body, wherein the fluid extraction tube is attached in a manner enabling fluid to be extracted from within the fluid container and dispensed via the body; and a weighting element (31) attached to the fluid extraction tube adjacent to a pick-up end of the fluid extraction tube, wherein the weighting element provides for displacement of the pick-up end of the fluid extraction tube to a gravity-induced position within the fluid container; wherein the fluid extraction tube extends approximately through a center of mass of the weighting element; wherein the fluid extraction tube is flexible; and a degree of flexibility of the fluid extraction tube is dependent upon a particular mass of the weighting element and a maximum specified displacement of the pick-up end of the fluid extraction tube; and wherein the body is one of a body for a manual pump non-atomizing fluid dispenser, a body for a manual pump atomizing fluid sprayer, a body for an aerosol spray dispenser and a body for a hose-end sprayer.

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5. Claims 1, 2, 6-8, 12-15, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Knieriem, Jr. (US Patent Number 3,667,655).

Knieriem, Jr. discloses a fluid dispensing apparatus, comprising: a fluid container having a neck portion and a closed end generally opposite the neck portion (see Fig. 2); a body mounted on the neck portion of the fluid container; a fluid extraction tube (1) attached at a delivery end thereof to the body, wherein the fluid extraction tube is attached in a manner enabling fluid to be extracted from within the fluid container and dispensed via the body; and a weighting element (3) attached to the fluid extraction tube adjacent to a pick-up end of the fluid extraction tube, wherein the weighting element provides for displacement of the pick-up end of the fluid extraction tube to a gravity-induced position within the fluid container; wherein the fluid extraction tube extends approximately through a center of mass of the weighting element; wherein the fluid extraction tube is flexible; and a degree of flexibility of the fluid extraction tube is dependent upon a particular mass of the weighting element and a maximum specified displacement of the pick-up end of the fluid extraction tube; and wherein the body is one of a body for a manual pump non-atomizing fluid dispenser, a body for a manual pump atomizing fluid sprayer, a body for an aerosol spray dispenser and a body for a hose-end sprayer.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Knieriem, Jr.

Wilson discloses a fluid dispensing apparatus, comprising: a fluid container (10) having a neck portion (to the right in Fig. 1) and a closed end generally opposite the neck portion (to the left in Fig. 1); a body mounted on the neck portion of the fluid container; a fluid extraction tube (23) attached at a delivery end thereof to the body, wherein the fluid extraction tube is attached in a manner enabling fluid to be extracted from within the fluid container and dispensed via the body; and a weighting element (31) attached to the fluid extraction tube adjacent to a pick-up end of the fluid extraction tube, and wherein the weighting element provides for displacement of the pick-up end of the fluid extraction tube to a gravity-induced position within the fluid container. Wilson is silent as to the material of the threaded nut (36).

Knieriem, Jr. discloses a similar weighted dip tube and has an explicit teaching of a material selection of metal for the weight (see column 1, line 75). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the material selection of metal for the weight of Wilson because metal is known to be relatively heavy and inert as taught by Knieriem, Jr. (see column 1, lines 73-75).

8. Claims 3, 4, 9, 10, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knieriem, Jr. in view of Banach (US Patent Number 6,375,092).

Knieriem, Jr. discloses a fluid dispensing apparatus, comprising: a fluid container having a neck portion and a closed end generally opposite the neck portion (see Fig. 2); a body mounted on the neck portion of the fluid container; a fluid extraction tube (1) attached at a delivery end

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thereof to the body, wherein the fluid extraction tube is attached in a manner enabling fluid to be extracted from within the fluid container and dispensed via the body; and a weighting element (3) attached to the fluid extraction tube adjacent to a pick-up end of the fluid extraction tube, wherein the weighting element provides for displacement of the pick-up end of the fluid extraction tube to a gravity-induced position within the fluid container; and wherein the fluid extraction tube extends approximately through a center of mass of the weighting element.

Knieriem, Jr. is silent as to the metallic weight being threaded. Banach discloses similar weights attached to dip tubes and discloses various obvious alternative methods of securement including threaded and non-threaded attachments. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have internally threaded the weight and externally threaded the dip tube of Knieriem, Jr. because applicant has not disclosed that this attachment method provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well with threaded or non-threaded attachment of the weight to the dip tube because the prior art (Banach) explicitly discloses that these are well-known obvious variations of securing a weight to a dip tube. Therefore, it would have been an obvious matter of design choice to modify Knieriem, Jr. to obtain the invention as specified in claims 3, 4, 9, 10, 16, and 17.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Coffield, Nurkiewicz, Taschner, Blanc, Farner, Bethlendy, Peng, and Kim et al. disclose similar weighted dip tubes.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (571) 272-4929. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eric Keasel 22 AUG 2005
Eric Keasel
Primary Examiner
Art Unit 3754